

HIGHLY CONFIDENTIAL - B. McDADE
UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

-----X

In Re:

Chapter 11

LEHMAN BROTHERS Case No. 08-13555(JMP)
HOLDINGS, INC., et al., (Jointly Administered)

Debtors.

-----X

* * *HIGHLY CONFIDENTIAL* * *

DEPOSITION OF BART McDADE

New York, New York

September 2, 2009

Reported by:

KATHY S. KLEPPER, RMR, RPR, CRR, CLR

JOB NO. 24045

1 HIGHLY CONFIDENTIAL - B. McDADE

2 September 2, 2009

3 9:57 a.m.

4
5 HIGHLY CONFIDENTIAL deposition
6 of BART McDADE, held at Jones Day, LLP,
7 222 East 41st Street, New York,
8 New York, before Kathy S. Klepfer, a
9 Registered Professional Reporter,
10 Registered Merit Reporter, Certified
11 Realtime Reporter, Certified Livenote
12 Reporter, and Notary Public of the State
13 of New York.
14
15
16
17
18
19
20
21
22
23
24
25

HIGHLY CONFIDENTIAL - B. McDADE

1

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

Q. Who were the Lehmanites who were again heading up the discussions? I know there were a lot of people involved, but who would you describe as the primary negotiators?

1 HIGHLY CONFIDENTIAL - B. McDADE

2 A. Bart McDade, Skip McGee, Mark Shafir,
3 clearly Dick Fuld was an informed party but not
4 in the room in terms of those discussions, would
5 be how I would describe the main, the main
6 Lehman principals.

7 Q. And who were the principals for
8 BarCap?

9 A. Rich Ricci, Jerry del Missier, and
10 their advisor, Michael Klein. And sorry,
11 Archibald Cox, the CEO of the Americas.

12 Q. Was Diamond involved?

13 A. In and out.

14 [REDACTED]
15 [REDACTED]
16 [REDACTED]
17 [REDACTED]
18 [REDACTED]
19 [REDACTED]
20 [REDACTED]
21 [REDACTED]
22 [REDACTED]
23 [REDACTED]
24 [REDACTED]
25 [REDACTED]

1 HIGHLY CONFIDENTIAL - B. McDADE

2 [REDACTED]
3 [REDACTED]
4 [REDACTED]
5 [REDACTED]
6 [REDACTED]
7 [REDACTED]
8 [REDACTED]

9 Q. With whom were those -- which Lehman,
10 which senior Lehman personnel were the subject
11 of those discussions or involved in them?

12 A. There was an established group of
13 eight individuals. That would have been the
14 group.

15 Q. And who were they?

16 A. McGee, Nagpal, Humphrey, Felder,
17 Donini, Gelband, Lee, and I apologize, I forget
18 the last.

19 [REDACTED]
20 [REDACTED]
21 [REDACTED]
22 [REDACTED]
23 [REDACTED]
24 [REDACTED]
25 [REDACTED]

1

HIGHLY CONFIDENTIAL - B. McDADE

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

1 HIGHLY CONFIDENTIAL - B. McDADE

2 [REDACTED]
3 [REDACTED]
4 [REDACTED]
5 [REDACTED]
6 [REDACTED]
7 [REDACTED]
8 [REDACTED]

9 Q. Do you know if any residential real
10 estate mortgage securities ultimately were
11 transferred to Barclays at the end of the deal?

12 A. It's my understanding, yes.

13 Q. What's that understanding based on?

14 A. My understanding is based -- my
15 understanding is based on our inability to
16 transact much in the way of those assets over
17 that period of week in terms of what market
18 activity. So those balance -- those balances
19 and those assets would have been there and those
20 balances were part of the transaction.

21 [REDACTED]
22 [REDACTED]
23 [REDACTED]
24 [REDACTED]
25 [REDACTED]

1 HIGHLY CONFIDENTIAL - B. McDADE

2 [REDACTED]
3 [REDACTED]
4 [REDACTED]
5 [REDACTED]
6 [REDACTED]
7 [REDACTED]
8 [REDACTED]
9 [REDACTED]
10 [REDACTED]
11 [REDACTED]
12 [REDACTED]
13 [REDACTED]

14 Q. Did anyone tell you that you -- that
15 Lehman had an excess of those assets at OCC?

16 A. Not specifically, no.

17 Q. Do you recall whether at any time
18 anyone told you that Lehman had an excess of
19 \$1.3 billion of cash deposited at the OCC?

20 A. No one told me that specifically, no.

21 Q. Did anyone tell you that Lehman had an
22 excess of \$900 million in additional assets
23 beyond the cash deposited at the OCC?

24 A. No one told me that.

25 Q. Did you ever have any discussion with

1 HIGHLY CONFIDENTIAL - B. McDADE

2 Barclays about Barclays acquiring the \$2.2
3 billion of excess cash and assets margin at OCC?

4 MR. HUME: Objection. Lacks
5 foundation.

6 A. I specifically did not.

7 Q. Are you aware whether Barclays ever
8 asked anyone at Lehman to include any of those
9 assets in the sale?

10 A. I'm not specifically aware of any
11 specific dialogue with respect to those options,
12 the collateral, BarCap and Lehman.

13 Q. And to your knowledge, was there ever
14 any intent on the part of Lehman to transfer any
15 of those excess cash, that 1.3 billion or any
16 additional assets, that was clearing in margin
17 at OCC to Barclays as part of the sale?

18 A. My recollection is the original
19 contemplation of those positions would have
20 been, to your point, the actual positions
21 themselves. Collateral would have been a
22 secondary consideration. We were concerned
23 about our collateral positions.

24 However, I think over the course of
25 the week, that became -- that became, to my

1 HIGHLY CONFIDENTIAL - B. McDADE

2 recollection, over the course of time, that
3 became something that ended up, I believe, in
4 the clarifying document.

5 Q. Did anyone tell you that the, under
6 the clarifying document, there had been some
7 agreement where Barclays to transfer to Barclays
8 an additional \$2.2 billion of cash and
9 securities representing margin, excess margin
10 and other assets at OCC?

11 A. No.

12 MR. HUME: Objection. Vague and
13 ambiguous. Lacks foundation.

14 Q. To your knowledge, was there ever any
15 intent on the part of Lehman that the clarifying
16 letter would provide Barclays an additional \$2.2
17 billion in margin at OCC?

18 A. No.

19 Q. What about margin, additional margin
20 that Lehman had at any other clearing
21 corporations, and I want to specifically include
22 any foreign clearing corporations, counterparts
23 to the OCC, were you aware, was there ever any
24 negotiations or intent on the part of Lehman to
25 transfer any such margin, cash or additional

1 HIGHLY CONFIDENTIAL - B. McDADE
2 assets, at foreign clearing corporations to
3 Barclays?

4 A. I'm not aware of those.

5 [REDACTED]
6 [REDACTED]
7 [REDACTED]
8 [REDACTED]
9 [REDACTED]
10 [REDACTED]
11 [REDACTED]
12 [REDACTED]
13 [REDACTED]
14 [REDACTED]
15 [REDACTED]
16 [REDACTED]
17 [REDACTED]
18 [REDACTED]
19 [REDACTED]
20 [REDACTED]
21 [REDACTED]
22 [REDACTED]
23 [REDACTED]
24 [REDACTED]
25 [REDACTED]